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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/746,974 | 12/22/2000 | Ajay P. Khaitan | 103400A | 8367 |

7590 10/07/2004

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EXAMINER

CHENCINSKI, SIEGFRIED E

| ART UNIT | PAPER NUMBER |
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3628

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/746,974

Applicant(s)

KHAITAN, AJAY P.

Examiner

Siegfried E. Chencinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Specification******Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

1. Claims 1 and 4-22 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 4-22 of prior U.S. Patent Application Number 09/738,940. This is a double patenting rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Consolidated Stores Corp. – hereafter Consolidated (Article, Closeout Shares (Consolidated Stores Corp.) (Money & Investments); Forbes, v156, n2. p. 322 (2), July 17, 1995).

Re. Claim 2, Consolidated anticipates a method of buying commodities comprising:

a. identifying suppliers of commodities having surplus capacities; and

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b. entering into take or pay supply agreements and/or option to purchase agreements for a plurality of commodities with one or more of said suppliers, each of said agreements specifying a cost for an individual commodity, said cost being less than market cost for said individual commodity in the absence of said take or pay supply agreement or option to purchase agreement (TEXT: II. 1-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Consolidated in view of Alexander C. Larson (hereafter Larson) and Sernet (US PreGrant Publication 2002/0032632 A1).

Re. Claim 1, Consolidated discloses a method of selling commodities comprising:

- a. identifying commodities which are generally used by industrial consumers and establishing a price for each combination, said price being lower than the sum of said market costs of said individual commodities (TEXT: II. 1-10); Consolidated does not explicitly disclose selling combinations of commodities. However, Larson discloses selling combinations of commodities (pp. 5-9, 18). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated with that of Larson to help sellers leverage buying power for non-competitive goods by tying them with the monopoly good and to maximize profits as disclosed by Larson.
- b. Consolidated does not explicitly disclose establishing a Web site at which said identified combinations of commodities are offered for sale at said price, wherein no price for an individual commodity is quoted.

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However, Sernet discloses establishing a web site at which identified combinations of commodities are offered for sale at said price (p. 2, [0025]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated and Larson with that of Sernet market this service on line, as disclosed by Sernet, for greater efficiency and to expand marketing reach to the rapidly growing prospects who prefer to do business online (Sernet, p. 1, [0003]).

3. Claims 3, 5, 6, 8, 13-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Consolidated in view of Larson and Sernet, and further in view of Gros et al. (US Pub. No. 2002/0004788 A1).

Re. Claim 3, Consolidated discloses a method of buying and selling commodities comprising;

- a. identifying suppliers of commodities having surplus capacities (TEXT: II. 1-10); Consolidated does not explicitly disclose selling combinations of commodities. However, Larson discloses selling combinations of commodities (pp. 5-9, 18). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated with that of Larson to help sellers leverage buying power for non-competitive goods by tying them with the monopoly good and to maximize profits as disclosed by Larson.
- b. Neither Consolidated, Larson nor Sernet explicitly disclose entering into take or pay supply agreements. However, Gros, in the same filed of endeavor of trading commodities online, discloses entering into take or pay agreements (p. 7, [0088 It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated and Larson with that of Sernet market this service on line, as disclosed by Sernet, for greater efficiency and to expand marketing reach to the rapidly growing prospects who prefer to do business online (Sernet, p. 1, [0003])).
- c. identifying combinations of commodities which are generally used by industrial consumers and establishing a price for each combination, said price being the sum of the cost of the individual commodities specified in said supply agreements plus a profit

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factor but said price being lower than the sum of said market costs of said individual commodities. The practice of adding up the costs of a bundle of items being offered for sale and adding a profit to establish a price such that the price will be less than the sum of the individual prices is a well known and long established practice;

d. Consolidated does not explicitly disclose establishing a Web site at which said identified combinations of commodities are offered for sale at said price, wherein no price for an individual commodity is quoted.

However, Sernet discloses establishing a web site at which identified combinations of commodities are offered for sale at said price (p. 2, [0025]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated and Larson with that of Sernet market this service on line, as disclosed by Sernet, for greater efficiency and to expand marketing reach to the rapidly growing prospects who prefer to do business online (Sernet, p. 1, [0003]).

Re. Claim 5, Consolidated/Larson/Sernet/Gros as applied to claims 1 and 3 disclose a method according to claim 1 or 3 of buying and selling commodities at a web site as discussed above. Consolidated/Larson/Sernet/Gros do not explicitly disclose a method according to claim 1 or 3 that said industrial consumer may specify desired purchase contract terms selected from the group consisting of quantity, date, and delivery location and then may enter into an automatically generated binding purchase contract to purchase said selected identified combination of commodities under said selected terms. However, Sernet discloses these limitations on p. 2, [0026]. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated/Larson/Gros with that of Sernet that a consumer may enter into contract which include these features because this will help in the execution of the contract as per mutually agreed to terms and eliminate the possibility of conflicts between the buyer and seller (Sernet, p. 1, [0003]).

Re. Claim 6, Consolidated/Larson/Sernet/Gros as applied to claims 1 and 3 disclose a method of buying and selling commodities according to claim 1 or 3 including selection of identified combination of commodities at a said web site as discussed above. wherein none of said suppliers is identified at said Web site.

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Consolidated/Larson/Sernet/Grosdo not disclose that none of the said suppliers is identified at said web site, However, Sernet discloses that none of said suppliers is identified at said web site (Sernet, p. 1, para. 0006). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated/Larson/Gros with that of Sernet to disclose the feature that none of said suppliers is identified at said web site because this will allow buyers and sellers to interact anonymously while also protecting their privacies as disclosed.

Re. Claim 8, Consolidated/Larson/Sernet/Gros as applied to claim 2 disclose a method of identifying suppliers of surplus commodities, buying and selling combinations of surplus commodities on a web site as discussed above.

Consolidated/Larson/Sernet/Gros as applied to claim 2 do not explicitly disclose a relational database used to process data to identify said suppliers of commodities having surplus capacities and rank the surplus capacities of commodities in order of best opportunities for profitable disposal of commodities and/or largest spread between cost to purchase said surplus capacities and probable selling price of said commodities. However, Sernet discloses a relational database to process data to identify said suppliers of commodities (p. 1, [0010, 0011; p. 2[0013, 0027]; p. 3, [0031-0032], p. 5, [0075]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have combined the art of Consolidated/Larson/Gros with that of Sernet to disclose the feature of using a database to process data concerning commodity suppliers and to identify them as explicitly disclosed in Sernet because management of relational a database makes it convenient and faster to store a large amount of beneficial data with regard to suppliers, their prices, etc. as directed in Sernet and then retrieve it as needed.

Consolidated/Larson/Sernet/Gros as applied to claim 8 above does not disclose that the relational database includes information on ranks of surplus capacities of commodities in order of best opportunities. However, this difference is found in the nonfunctional descriptive material and is not functionally involved with the claimed step of using a relational database in claim 8. The step of using a relational database would be performed the same regardless of whether the database includes the information

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about ranks of surplus capacities or not, or include much more information about the suppliers, quantities, etc. Thus, this descriptive material which includes information on ranks of surplus capacities will not distinguish the claimed invention from the prior art in terms of patentability (see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re. Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to use a relational database to store and retrieve any data because such data and intended use of the data do not functionally relate to the steps of using a relational database step and also because the subjective interpretation of the data stored and the intended use of the stored data do not patentably distinguish the claimed invention.

Re. Claims 13 & 14, the limitations of these systems claims correspond to the limitations of method claims 1 and 3 and are therefore analyzed and rejected as being unpatentable over Consolidated in view of Larson, in view of Sernet and further in view of Gros based upon the same rationale.

Re. Claim 17, its limitations correspond to the limitations of the method claims 8 and is therefore analyzed and rejected as being unpatentable over Consolidated in view of Larson, in view of Sernet and further in view of Gros based upon the same rationale.

Claims 4, 7, 9-12, 15, 16, and 18-22 are rejected under 35 U.S.C. 103(a) as being obvious over Consolidated/Larson/Sernet/Gros and further in view of Official Notice.

Re. claim 4, Consolidated/Larson/Sernet/Gros as applied to claim 3 discloses a method of buying and selling commodities on a web site as analyzed above.

Consolidated/Larson/Sernet/Gros does not disclose automatically adjusting said price based on one or more factors selected from the group consisting of currency exchange rates, currency risk, credit risk, country specific political risk, delivery dates, delivery locations, freight costs, Customs duties, and remaining available amount of each commodity in a particular combination under said take or pay supply agreements.

Official Notice is taken of the well-known and old concept of automatically adjusting the selling price based on one or more factors selected from the group consisting of currency exchange rates, currency risk, credit risk, country specific political risk, delivery dates, delivery locations, freight costs, Customs duties, and remaining available amount of each commodity in a particular combination under said take or pay supply agreements. It is a well-known fact that international trade is conducted among different countries having different currencies and as such the selling price for example from an US supplier to a Japanese buyer would be adjusted from US dollars to Japanese yens, Also it is well known that when selling products to countries having high political risks the selling prices are adjusted for these political risks like asking for 100% payment in advance instead of regular payment methods against letter of credit, etc.. Freight costs depending upon the locations of different countries can vary immensely and as such will effect the selling price accordingly. It is also well-know that if the buyer demands delivery earlier than the regular delivery the there can be a premium price for the earlier than regular delivery.

In view of the Official Notice, it would have been obvious to a person of an ordinary skill in the art at the time of the invention to have modified Consolidated/Larson/Sernet/Gros as applied to claim 3 to combine this feature of Official Notice , that is to automatically adjust said price based on one or more factors selected from the group consisting of currency exchange rates, currency risk, credit risk, country specific political risk, delivery dates, delivery locations, freight costs, Customs duties, and remaining available amount of each commodity in a particular combination under said take or pay supply agreements because to safeguard the seller from any expected adverse effects and/or extra cost incidences.

Re. claim 7, Consolidated/Larson/Sernet/Gros as applied to claim 3 discloses a method of buying and selling combination of commodities on a web site as analyzed above. Consolidated/Larson/Sernet/Gros does not disclose that said combinations of commodities are branded only with a name or mark of an owner of said Web site. Official Notice is taken of the well-known concept and benefits of branding the s a i d combinations of commodities with a name or mark of an owner of said Web site, e.g. in

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travel industry it is a well-known fact the tour/vacations services/agents/intermediaries of airlines/hotel booking/rental cars, etc. are bundled in a single package and offered by the owner of the business on his name, irrespective of the fact via Internet or otherwise. In view of the Official Notice it would have been obvious to a person of an ordinary skill in the art at the time of the invention to have modified Consolidated/Larson/Sernet/Gros as applied to claim 3 to combine the feature of Official Notice that is to brand the combination of commodities/goods in the name of the Web site who is selling them because it will help the agents/intermediaries to maintain the anonymity of the original suppliers of the products/services and thereby preventing the consumers to go to them and endangering their own business and revenues.

Re. claims 9-12, Consolidated/Larson/Sernet/Gros as applied to claim 8 discloses a method of identifying suppliers of surplus commodities, buying and selling combination of surplus commodities on a web site and using a relational database to process stored data about the suppliers and surplus capacities as analyzed above.

Consolidated/Larson/Sernet/Gros as applied to claim 8 does not disclose:

Including a sphere of influence information in a relational database, wherein a sphere of influence for a commodity supplier is identified as a territory in which the commodity supplier normally sells at least 90 percent of its output (claim 9); determining consumer demand for each commodity in each territory and each sphere of influence and included in the relational database

Including in the database core tables of basic information about plants, customers, and products, linking tables of information linking the core boxes with each other, and other tables (claim 11); and

Using the relational database to determine likely variable costs, marginal capacities, sphere of influence, freight, foreign exchange rates, and/or labor costs and to rank suppliers of commodities in order of likely profitability for a given commodity to be purchased and resold.

All the above limitations relate to an use of a relational database, wherein a plurality of data is stored and the users can retrieve data, calculate data, determine data

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from the stored data, etc. as per their requirement.

Official Notice is taken of the concept and benefits of relational database. It is old and well-known to store a plurality of data in the form of tables and rows in a relational database, and conducting searches by using data in specified columns of one table to find additional data in another table because it helps the users to retrieve data, calculate data, determine data from the stored data, as per their requirement, regardless of the type of data stored.

In view of the Official Notice, it would have been obvious to a person of an ordinary skill in the art at the time of the applicant's invention to have modified Consolidated/Larson/Semet/Gros as applied to claim 8 to incorporate the feature of storing and using information described in claims 9,11, and12 above in a relational database because the management of relational database would assist the users to store data, retrieve data, calculate data, determine data from the stored data etc.

Re. claims 15-16, the limitations of these systems claims correspond to the limitations of the method claims 4 and 7 respectively and are therefore analyzed and rejected as being obvious over Consolidated in view of Larson, in view of Semet, in view of Gros and further in view of Official Notice based upon the same rationale.

Re. claims 18-21, their limitations correspond to the limitations of the method claims 9-12 respectively and are therefore analyzed and rejected as being unpatentable and obvious over Consolidated/Larson/Semet/Gros and in further view of Official Notice based upon the same rationale.

Re. claim 22, its limitations correspond to the limitations of the method claim 4 respectively and is therefore analyzed and rejected as being unpatentable and obvious over Consolidated/Larson/Semet/Gros and in further view of Official Notice based upon the same rationale.

Conclusion

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3. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Siegfried Chencinski whose telephone number is 703-305-6199. The Examiner can normally be reached Monday through Friday, 9am to 6pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Hyung S. Sough, can be reached on 703-308-0505.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks Washington D.C. 20231

or faxed to:

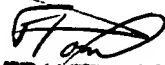
(703)872-9306 [Official communications; including After Final communications labeled "Box AF"]

(703) 746-9601 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2411 Crystal Drive, Arlington, VA, 7th floor receptionist.

SEC

September 30, 2004


FRANTZY POINVIL
PRIMARY EXAMINER
Ad 3628